Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-805

ELVINA BUGG, ET AL.,
Appellants,

v.

MARYLAND TRANSPORTATION AUTHORITY,
Appellee.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

JURISDICTIONAL STATEMENT

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APPEAL FROM THE COURT OF APPEALS OF MARYLAND

JURISDICTIONAL STATEMENT

STATEMENT AS TO JURISDICTION

The Appellants, pursuant to United States Supreme Court Rules 13 (2) and 15, files this statement on the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct Appeal to review the final judgment in question, and to

show that a substantial federal question is presented upon which this Court shall exercise such jurisdiction in this case.

OPINIONS BELOW

The opinion of the Court of Special Appeals of Maryland, (Appendix A, infra) and the denial of review by Certiorari by the Court of Appeals of Maryland (Appendix B, infra) have not been reported.

JURISDICTION

This is not civil proceeding in which the Appellants were denied receiving compensation for land taken in condemnation proceedings by the Appellee, Maryland Transportation Authority, an agency of the State; which had previously over the protest of Appellants paid compensation to other parties; contrary to provisions of Article 23 of the Maryland Declaration of Rights, and Article III, §40 of the Constitution of Maryland. The case was dismissed with costs by the Circuit Court of Cecil County by Decree dated September 23, 1975. On Appeal to the Court of Special Appeals for Maryland, the dismissal of the Appellants' Declaration was affirmed by opinion dated June 7, 1976, and mandate issued July 7, 1976. Subsequent thereto, a Petition for Certiorari was denied by the Court of Appeals of Maryland.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fifth and Fourteenth Amendments to the Constitution of the United States which in pertinent part provide:

Fifth Amendment to the Constitution of the United States

> No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment to the Constitution of the United States

Section I.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction of the laws.

This case also involves Article 23 of the Maryland Declaration of Rights which states:

> That no man ought to be taken or imprisoned or deprived of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property but by the judgment of his peers, or by the Law of the Land.

This case further involves, Article III, §40 of the Constitution of Maryland which provides:

> The General Assembly shall enact no law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation.

Timely notice of Appeal to this Court was filed in the Court of Appeals of Maryland on October 13, 1976. (Appendix C, infra). Since the Court of Appeals of Maryland refused to consider the merits of Appellants' Appeal, the judgment of the Court of Special Appeals of Maryland is reviewable by this Court as the judgment of the highest State Court in which a decision would be had. *Minneapolis, St. P. & S. S. M. R. Co., v. Rock*, 279 U.S. 410 (1920); *Virginia R. Co. v. Mullens*, 271 U.S. 220 (1926).

Jurisdiction of this Court is involved pursuant to 28 U.S.C. 1257 (3), this being an Appeal which involves the deprivation of property taken for public use without just compensation; and the denial of due process and equal protection of the law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States. *Flournoy v. Weiner,* 321 U.S. 253 (1944).

QUESTIONS PRESENTED

Whether Appellants were deprived of their property taken for public use, without just compensation; and without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

Whether Appellants' privileges were abridged, were deprived of property, and denied equal protection of the law in violation of the Fourteenth Amendment of the United States.

STATEMENT OF THE CASE

A. Factual Background

On August 11, 1958, Pink Bugg, now deceased, and Elvina Bugg, his wife, purchased at a tax sale for $140 a parcel of land, inimproved, situated in the Seventh Election District of Cecil County, described in the advertisement of sale as containing approximately two (2) acres, located on the east side of Route No. 22, near Cokesbury, Frenchtown Road, adjoining property of W. J. Gaddy, and assessed to William Cooper Estate, as evidenced by a Certificate of Sale executed by Clement W. Mackie, Collection of Taxes (County Treasurer and now deceased). On January 6, 1960, the Buggs filed their Bill of Complaint in this proceeding to foreclose the rights of redemption of "William Cooper, deceased, and the William Cooper Estate, and all persons claiming to have an interest in the Seventh Election District of Cecil County, Maryland, and described as a

piece or parcel of land, unimproved land, and containing 14.160 acres, more or less, adjoining the property of W. J. Gaddy, and assessed to William Cooper Estate," and further praying an absolute and indefeasible fee simple title thereto in the Plaintiffs (Buggs). The Bill recited that the acreage of 14.160 acres was determined by an accurate survey made on December 15, 1959. An order of publication was duly published in a newspaper published in Cecil County, and on June 15, 1960, the Court passed a decree vesting the fee simple title "in and to all of that lot or parcel of land as described in these proceedings" in Pink Bugg and his wife, and further ordered that the County Treasurer prepare and execute a deed therefor to the purchasers. Accordingly, a deed prepared by the attorney for Bugg, was executed on June 17, 1960, by the County Treasurer conveying to the William Cooper Estate property to Mr. and Mrs. Bugg. After taking possession of the property described in their deed, the Buggs were thereafter ejected therefrom as a result of a proceeding contrary to the first Order of Decree, in Cecil County on July 27, 1961, and thereafter without explanation removed to Kent County for trial, being Law No. 4991 in Cecil County. The Court of Equal Jurisdiction in Kent County, without jurisdiction determined that the property described in Buggs' deed was property formerly owned by one Philip Smeltzer and not William Cooper.

During this period of time, the State of Maryland was acquiring land for the construction of the John F. Kennedy Highway (I-95), then called Northeastern Expressway. Initially, the Appellants Bugg were included as defendants in the condemnation case, however, after the aforementioned 1961 proceeding in Kent County which determined that the tract of land in question belonged to the heirs of Philip Smeltzer, the State Roads Commission paid Charles W. McKeever of Haddonfield, New Jersey and R. E. and Dorothy

Shivery of Wilmington, Delaware for rights of way claims.

On May 26, 1967, the Buggs filed suit for ejectment against the Maryland State Roads Commission, being Law No. 7869, from the land which they claimed under their deed. Upon motion by the Commission the Court dismissed the case which denied consideration of the Cecil County Decree holding that the ejectment suit in Kent County, established that they had no title to the land described in their deed. On Appeal the Court of Appeals affirmed the ruling of the trial court.

Through the succeeding years, Pink Bugg, through attorneys unsuccessfully fought for his rightful title; all of this time continuing to pay taxes (which are today still being paid) on land not in his name. Finally, in 1972, after a reputable firm of engineers and land surveyors accurately determined from the land records of Cecil County the metes and bounds of the property which was the subject of the tax sale in 1958, the Circuit Court of Cecil County, Maryland upon the request of the Plaintiff, Pink Bugg, to have executed a corrective deed, on May 1, 1972, which signed an Order directing the County Treasurer to show cause, if any, why the relief prayed for should not be granted. In response thereto, the said Treasurer filed an Answer contending that the Maryland Transportation Authority held title to a portion of the land claimed by the Plaintiffs and prayed that they be made party to the proceedings. The Court in its opinion referred to its earlier Decree of June 15, 1960, which foreclosed the right of those claiming any interest in the property, and denied the County Treasurer's request; and Ordered that the corrected deed be executed on June 15, 1972, Equity No. 9111, in the Circuit Court for Cecil County.

The instant case is the culmination of attempts by the Appellants through ejectment, to compel the Maryland

Transportation Authority to rightfully compensate them for land which they were wrongfully disposed of, yet later revested of, and never given their rightful opportunity to fully participate in the condemnation proceedings or given compensation for the taking thereof.

B. The Case

The Appellants contended that they were denied due process and equal protection of the law under the State and Federal Constitutions in the taking of their land. The Maryland Transportation Authority, did not, as is contended in the Court's opinion being Petitioned from, take all of the necessary steps, in an orderly fashion, to acquire the private property sought by it, by paying just compensation to parties then adjudicated to be the legal owners. Rather it elected to ignore the adjudicated legal owners established as being so by the County Court in which the property was located, on June 15, 1960; and paid compensation as ordered by the Kent County Court, to other individuals who by both the earlier Decree and subsequent Deed of the Cecil County Court had been forever barred from asserting any right to redemption.

For "Due Process" to be met it was required that the sovereign act in keeping with the Order of adjudication, and pay compensation to the parties *who were then*, and again *re-established* as being the true owners of the land condemned; rather than willfuly assisting by the enforcement of a patently wrong Decree, in the preparation of the wrongful taking of property in violation of the Maryland and United States Constitutions. In view of the fact that two Courts of equal jurisdiction had awarded the property to two different parties; it was incumbent upon the Appellee sovereign to in the interest of equal protection of its citizens, and in the ultimate interest of justice to scrutinize both

Decrees, and fairly determine that the Kent County Court did not even have jurisdiction over the subject matter.

Certainly, in initially naming the Appellants as Defendants to the suit, the Appellee recognized that corrected Deed ordered by the Court in 1960, vesting title absolute in the adjudicated owners. The said 1960, corrected deed, rather than the 1972 second award, (stated on page 14 of the Court's opinion) is the execution date upon which the Appellants contended that bona fide title did not pass from the true owners to the Appellee Maryland Transportation Authority. The Public Records existed in Cecil County, as well as Kent County at the time of the award of compensation; and to voluntarily elect to adhere to the Public Records outside of the County in which the property was situated was prejudicial to the Appellants in violation of their Constitutional Rights.

The suggestion in footnote 8, page 14 of the Opinion of the Court of Appeals, stating that the Appellants should seek justice from those who received compensation from the State, "if not barred by the Statute of Limitations", is untenable. In 1961, in Kent County, the Circuit Court, prejudicially ignoring *the law*, wrongfully awarded the land to the heirs of the Smeltzers; and accomplished this through the voluntary and willful help of the Appellee which was purporting to act pursuant to a state statute; however, not giving any credence to the Order and public records of Cecil County. It was not until 1972, eleven years later that the "conscience" of justice was reawakened to bring the complete denial of due process to the Appellants to light in Cecil County. To suggest that "the battle the Buggs were waging is directed towards the wrong foe" is contended to be incorrect.

The Opinion of the Court of Special Appeals erroneously implied on pages 16, 17, and 18, that the

Appellants relied solely on the fact that the Maryland Transportation Commission appeared to defend an ejectment suit against it in 1967, filed by the Buggs, as their ground for contending that sovereign immunity is not applicable in the instant case.

As an introductory statement to the Argument presented on behalf of the Appellants in the brief filed with the Court of Special Appeals (page 4), reference was made to the above-mentioned fact to establish that the type of suit now before the Court for ejectment against the State could and had been maintained. However, its primary contention presented the issue as to whether or not, in view of the law recited in *Dunne v. State*, 162 Md. 274, the Appellee had submitted to the jurisdiction of the Court *by exercising its authority of eminent domain pursuant to statutory condemnation proceedings*, which were enacted to protect the citizens of this sovereign state.

The Court of Special Appeals clearly failed to answer or address this crucial issue and those of due process in its Order affirming the dismissal of the instant case.

SUBSTANTIAL FEDERAL GROUNDS FOR GRANTING PLENARY HEARING

I. THE DECISION OF THE STATE COURT IS VIOLATIVE OF THE APPELLANTS' RIGHTS GUARANTEED BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Article 23 of the Maryland Declaration of Rights in pertinent part states, that no man ought be deprived of his property, but by Law of the Land. The fact that the Circuit Court of Cecil County had vested ownership and title of the property in the Appellants in 1960, and again re-vested the same in 1972, pursuant and in keeping with its earlier Order; clearly establishes that the Appellants were deprived of ownership and compensation not in keeping with the law. The second Order of the Circuit Court of Cecil County, clearly stated that the Appellee State had no interest or title in the land.

The Maryland Constitution Article III, § 40, states that the State is not exempt from suit where it acts outside the statute and outside the Constitution. A remedy open to owners of property, is as stated in *Dunne v. State of Maryland,* 162 Md. 274 (1932) at 291, that State agencies can be restrained from appropriating property, unless and until just compensation is awarded and paid.

In violation of the Fifth Amendment to the Constitution of the United States, under the misapplication of State law governing condemnation proceedings, and sovereign immunity, the State Court has taken the property of Appellants for public use, without just compensation. *Dunne, supra,* relied upon in the opinion, does not apply to the appellants who were in fact parties to the condemnation proceedings. The denial of due process in the State Courts, the enforcement of a patently erroneous Decree by the State agency and the refusal of the State Court to apply prevailing law to the facts of the instant case, gave rise to substantial grounds for plenary hearings.

II. THE DECISION OF THE STATE COURT IS VIOLATIVE OF THE APPELLANTS' RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The State Agency in violation of the Fourteenth Amendment, deprived Appellants due process and equal protection of the laws. Why the Appellee Maryland Transportation Authority ever listed anyone other than the Appellants, as defendants in the condemnation proceeding, after the Order of the Circuit Court of Cecil County had been entered, and the corrected Deed filed, has never been answered. Why, after the payment of taxes by the Appellants for all of the years in question; and the dubious removal and Order of the case to another Circuit County Court were followed and enforced by the Appellee, there was no acknowledged

recognition that a denial of due process and equal protection under the law lurked throughout the case, the State Court refused to review the same is subject to review.

The Appellants were by the Appellee, and State Courts of Maryland through prejudicial acts and rulings clearly deprived of their rights. The opinion of the State Court cites no precedent for its decision, which blightly fails to address the facts: that the Appellants, Buggs, were *at all* relevant times and still are the owners of property taken for which compensation has not been paid; that sovereign immunity as applied to the facts of the instant case cannot be maintained on the theory of the *Dunne* case, *supra.*

To hold that Appellants remedy lies against outside parties, (when the statute of limitations has run, prior to the even 1972 Order of the Circuit Court of Cecil County), and when, the State cannot lawfully claim immunity is a fraudulent denial of due process.

To not give equal protection of the laws to citizens, by allowing them to with prejudice defend their rights to property is in violation of the Constitution. Unfortunately, from the outset of the ejectment proceedings first failed against the Buggs in 1961, which were contrary to State law (in view of the early 1960 Decree); through the Appeal of the instant case, there has been no justice for the Appellants, black citizens who dared to defend their rights.

To the contrary, as in the inappropriate and unjust words of the Assistant State's Attorney, the attempts to obtain the rights of due process and equal protection by the Appellants have been viewed as the acts of "an elderly litigious man" who "achieved the status of [a] frequent visitor" to the Court of Appeals, died on September 5, 1973 (E. 6), his vexatious cause celebre continues to be litigated ad nauseam et ad confusionem.

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CONCLUSION

For the reasons stated above, it is respectfully submitted that the questions presented by this Appeal are substantial and that they justify plenary hearing by this Court.

Respectfully submitted,

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APPENDIX A

Reported
(Filed June 7, 1976)

In The
Court of Special Appeals Of Maryland

September Term, 1975

No. 1058

Elvina Bugg, et al.
v.
Maryland Transportation Authority, et al.

Gilbert, Menchine, Fairbanks, Philip M. (specially assigned), JJ.

OPINION BY GILBERT, J.

Since 1960, Pink Bugg and Elvina Bugg have been involved in a controversy over 12.5 acres of land condemned by the erstwhile State Roads Commission and upon which part of the John F. Kennedy Expressway is now situated.

The Court of Appeals, in *Bugg v. State Roads Comm'n*, 250 Md. 459, 243 A.2d 511 (1968), opined, "This case marks the end of a long trail which Mr. and Mrs. Bugg have travelled for some eight years." 250 Md. at 460. The seeming tolling of the knell for the "Bugg-State Roads" controversy was, in the words of the late Samuel Langhorne Clemens (Mark Twain), "greatly exaggerated."[1]

[1] Embodied in a cable from London, England, in 1897 to the Associated Press, the full text read: "The reports of my death are greatly exaggerated."

Because of its informative value as background for the instant litigation, we deem it advisable to quote the recitation of facts set forth by the Court of Appeals in *Bugg v. State Roads Comm'n, supra:*

> "Some time prior to June 1960, the Buggs purchased at a tax sale in Cecil County certain property located in the county which was assessed to the estate of William Cooper. While there is a suggestion that the property which was sold approximated two acres, when the Buggs instituted an equity proceeding in Cecil County to foreclose any right of redemption to the land which they had purchased, it seems that Mr. Bugg took a surveyor to the property which he thought he had purchased and indicated what he believed to be the boundaries. The surveyor prepared a description and the Buggs ultimately received a deed signed by the county treasurer which conveyed to them the tract covered by the description, containing 14.16 acres. Since the record in that case is not before us, there is no way to shed light on this anomaly.
>
> In about 1962, the State Roads Commission (the Commission) having determined that 12.5 acres of the tract were required for the construction of the Northeastern Expressway, instituted proceedings for the acquisition of the required acreage in the Circuit Court for Cecil County and deposited the sum of $3,125, which the Commission believed to be the fair value of the property. Presumably as a result of the Commission's title examination, Charles McKeever, Marie K. McKeever, Dorothy M. Shivery and R. E. Shivery were named as defendants, together with Mr. and Mrs. Bugg. Later, it was determined that Marie K. McKeever had died, leaving as her heirs at law her children, Charles McKeever and Dorothy M. Shivery, the latter being the wife of R. E. Shivery.
>
> Subsequent to the filing of the Commission's suit, Mr. McKeever and Mrs. Shivery brought action in ejectment against Mr. and Mrs. Bugg in Cecil County. The case was removed to and tried by the Circuit Court for Kent County and resulted

> in a verdict against the Buggs. In that case, in which Mr. and Mrs. Bugg were represented by counsel, Mr. McKeever and his sister were able to satisfy the court that the 14.16 acre tract had been owned by one Philip Smeltzer; that they had acquired the property from the heirs of Philip Smeltzer; and that Mrs. Shivery had paid the taxes on the property from 1957 to 1961. The court properly concluded that a tax sale of property on which taxes have been paid is invalid, . . . and may be the subject of collateral attack if the court lacks jurisdiction over the subject matter. . . .
>
> As a consequence of Mr. McKeever's and Mrs. Shivery's victory in the ejectment suit, the Commission amended its petition in the condemnation suit, eliminating all defendants other than Mr. McKeever and Mrs. Shivery, with the result that they recevied the $3,125 deposited with the court clerk in connection with the taking.
>
> There is an intimation, which the record before us neither confirms nor explains, that Mr. Bugg may have paid taxes on the 14.16 acre tract from the time of the tax sale until the Commission's taking, and he testified below that he has been paying taxes on the 1.66 acre parcel which remained after 12.5 acres had been taken. Resolute in the pursuit of their claim, the Buggs, on 26 May 1967, brought a suit in Cecil County against the Commission in which they sought to eject the Commission from the 14.16 acres or alternatively, to require the Commission to answer in damages. The Commission moved to dismiss, on the ground that the verdict in the Cecil County ejectment suit was determinative of the Buggs' rights. The Buggs countered with the contention that the Cecil County case only validated the McKeever-Shivery title as to the 12.5 acres taken in condemnation, leaving a 1.66 acre parcel still titled in the Buggs. It was from the order dismissing the Buggs' suit that this appeal was taken." 250 Md. at 460-61.

We glean from the record that the Buggs reopened the prior case and demonstrated, to the satisfaction of the trier of fact, that the Buggs were indeed the true owners, in 1960, of the land in controversy. The treasurer of Cecil County was apparently directed to execute a new deed to the Buggs. The deed, dated August 25, 1972, recites that it was made pursuant to a decree of the Circuit Court for Cecil County passed on June 15, 1972.[2] The deed further states that the prior treasurer's deed was erroneous in that it purported to convey two acres of land ". . . then belonging to the heirs of Philip Smeltzer, deceased, instead of the land then owned and assessed to William Cooper's Estate . . ." Furthermore, the new deed stated the correct quantity of land as ". . . 15.406 acres of land more or less. . . ."

Approximately two years later, on August 2, 1974, Gary Bugg, "Administrator of the Estate of Pink Bugg, Deceased,"[3] brought suit against the Maryland Transportation Authority (MTA) and against, as the Attorney General describes it in his brief, the ". . . mythical John F. Kennedy Memorial Highway Commission." The suit was commenced by the filing of a paper writing entitled "Bill in Equity for Damages." The "Bill" alleged that Pink Bugg was unlawfully ejected from his rightful possession of approximately 13 acres of the land when the State Roads Commission, the predecessor of the MTA, took the land for use in connection with the John F. Kennedy Memorial Highway. Monetary damages in the amount of $10,000,000 were demanded. The MTA demurred to the "Bill." Subsequently, Elvina Bugg was added as a party plaintiff.[4] Judge J. Albert Roney, Jr., sustained the MTA's demurrer to the "Bill" with leave to amend.

[2] The June 15, 1972 order is a part of the record, as is the deed executed in conformity therewith.

[3] Mr. Pink Bugg died in 1973. We observe that the designation of administrators or executors is passé. *See* then Md. Ann. Code art. 93, § 1-101(n), and then Subtitle VI of art. 93. The proper designation is "personal representative." Md. Ann. Code, Estates and Trusts Art. §§ 1-101(o), 6-101 *et seq.*

[4] In answer to a request for admission of fact, Md. Rule 421, Gary Bugg denied that Elvina Bugg was the lawful wife of Pink Bugg. The deeds to Pink Bugg and Elvina Bugg, however, refer to them as husband and wife. The property at issue was conveyed to the duo as "tenants by the entireties." A tenancy by the entirety can only exist between husband and wife. Mitchell v. Frederick, 166 Md. 42, 170 A. 733 (1934); H. Tiffany, *A Treatise on the Modern Law of Real Property and Other Interest in Land* § 290 (abr. ed. 1940). A deed to unmarried persons as "tenants by the entirety" is a deed as tenants in common. Perrin v. Harrington, 146 App. Div. 292, 130 N.Y.S. 944 (1911).

Elvina Bugg, individually, and Gary Bugg, as administrator of the estate of Pink Bugg,[5] filed an "Amended Bill of Complaint" against "Maryland Transportation Authority, et al."[6] The "Amended Bill" narrated substantially the same facts as the original Bill except that it charged that there was no adequate remedy at law and if ". . . brought in a law court would be classified as an ejectment proceeding . . ." and, thus, was ". . . immediately precluded by the doctrines of sovereign immunity." Viewing themselves as being without a remedy at law, the complainants stated that the MTA's actions, in building and using a highway running over the complainant's land, constituted ". . . a continuing nuisance . . ." which should be abated, and that the wrong committed by the State against them should be righted.

The complaint further averred that for ". . . at least twelve (12) years last past . . ." the MTA has been endeavoring to ". . . assume . . . sole control . . ." over the 12.5 acres. The complainants prayed, *inter alia,* that the court: (1) enjoin the MTA ". . . from preventing plaintiff's . . . entry upon and over . . . [the] property . . ."; (2) enjoin the MTA's use of the property ". . . without due compensation to plaintiffs . . ."; (3) enjoin MTA ". . . to remove each and every structure [upon the land] and . . . to abate the nuisance . . ."; (4) restrain the MTA ". . . from permitting the unlawful flow of vehicular traffic . . ." over the highway; (5)

[5] *See* note 3 *supra.*

[6] Paragraph number 1 of the Amended Bill of Complaint expressly stated that "John F. Kennedy Memorial Highway Administration" was ". . . sued in its own capacity as such." That defendant, if it exists at all, has not been served and, consequently, is not a party litigant.

compel the MTA to regrade the land; (6) order payment from MTA of compensation for the nuisance; and (7) further order payment of ". . . restitution in the amount of $10,000,000.00. . . ." The MTA promptly filed a "Motion Raising Preliminary Objection," Md. Rule 323b. Judge Roney granted the MTA's motion that the case be dismissed, and this appeal followed.

In this Court, the appellants raise three questions, namely:

> "I. Whether the trial court was in error in granting dismissal based upon a Preliminary Motion Raising Objection on the ground of governmental immunity, where there had been exercised statutory consent on the part of the State to be sued.
>
> II. Whether the failure of the trial court to distinguish the instant case from the precedent relied on [in] its opinion deprived Appellants of the compensation to which they are justly entitled.
>
> III. Whether the dismissal of the instant case by the trial court deprived the Appellants of their rightful standing to contest, pursuant to State legislation condemnation of their land."

We view the three questions to be but one, namely, did the chancellor err in granting the MTA's motion raising preliminary objection?

From *Bugg v. State Roads Comm'n, supra,* we learn that the MTA's predecessor, in 1962, paid $3,125 for the 12.5 acres to the parties that were determined by the circuit court to be the rightful owners of the tract. The order of June 15, 1972, indicates, however, that the earlier ownership determination by the circuit court may have been wrong.

To support their contention that they are entitled to maintain the instant suit against the State, the appellants point to the Federal and State Constitutions which, by their very language, forbids the sovereign's taking of private property without just compensation.

The Fifth Amendment to the Constitution of the United States proscribed the taking of ". . . private

property . . . for public use, without just compensation." The Fourteenth Amendment declares that no ". . . State deprive any person of life, liberty, or property, without due process of law."

In the Maryland Declaration of Rights, Article 23, it is mandated, "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land." Article III, § 40, of the Constitution of Maryland, provides that, "The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation."

The weakness in the foundation of the appellant's constitutional argument, and one which causes that base to crumble under close scrutiny, is that there has been full compliance by the MTA with the 5th and 14th Amendments, as well as with Article 23 of the Declaration of Rights, and Article III, § 40, of the Maryland Constitution.

When the State Roads Commission commenced condemnation proceedings in 1962, it joined, as parties defendant, Pink Bugg and Elvina Bugg, along with other persons thought by the Commission to be parties in title. The Commission deposited into the circuit court the sum of $3,125 which it believed was, at that time, a fair and reasonable price for the 12.5 acres of land that it sought to appropriate for public use. The Commission's condemnation suit and simultaneous deposit of monies into the registry of the circuit court prompted the litigation between the Buggs and other purported owners concerning title to the land. That suit, in ejectment, resulted in a judgment against the Buggs. The Commission then had the right, in reliance upon that judgment, to delete the Buggs as defendants from the condemnation proceeding on the grounds that they were not proper parties. The monies paid for the land as a result of the condemnation flowed to the persons who had been adjudicated to be the rightful owners.

Later, efforts by the Buggs to oust the Commission from the 12.5 acres that had been successfully and lawfully condemned met with the same lack of success as the Buggs' defense of the ejectment suit. *Bugg v. State Roads Comm'n, supra.*

Approximately ten years after the condemnation suit had been reduced to final judgment, the Buggs, in a proceeding in which neither the Commission nor its successor, the MTA, was a party, established to the satisfaction of the circuit court that the Buggs had, in fact, actually acquired, in 1958, by a tax sale, the title to the 12.5 acres that had been condemned by the State in 1962. As we have already said, the county treasurer was then ordered to execute and deliver a corrective deed to the Buggs. On the strength of the corrected deed, the appellants instituted the present suit. Why the Buggs waited until 1972 to demonstrate the correct amount of acreage they had purchased at the 1958 tax sale and did not establish that fact in the 1962 ejectment case is not disclosed by the record.

Underlying appellants' argument is the clear implication that they were denied the due process guaranteed them by the Federal and State Constitutions. We, however, do not share the view that the net results in the case *sub judice* are below the Plimsoll mark. We believe due process, in the case now before us, was satiated when a jury of the Buggs, peers determined, on the basis of the evidence presented to it, that the Buggs were not the rightful owners of the 12.5 acres and, thus, rendered a verdict against the Buggs. That the Buggs, for whatever reason, did not then establish, as they later did, that the 1958 deed was incorrect does not deny them due process; they were merely denied the result they desired. Had the evidence adduced at the 1962 ejectment case been the same as that produced in the 1972 case, the verdict, in the ejectment case, may have been different, but we need not speculate on that.

Due process of law does not mean that the litigant need be satisfied with the result. The "Due Process" provision of the Constitution is satisfied when, as here, the sovereign has taken all necessary steps, in an

orderly fashion, to acquire the private property sought by it and has paid just compensation to parties then adjudicated to be the legal owners. "Due Process" does not require the sovereign to act as a continuing guarantor of the correctness of the adjudication, nor to pay compensation to a party who is later proven to be the true owner. A condemnation proceeding is a proceeding *in rem* and is binding upon all persons who are interested in the *res* even though they may not be, technically, parties to the suit. *Record Bldg. & Loan Ass'n. v. Safe Deposit & Trust Co.*, 166 Md. 348, 352, 171 A. 43, 45 (1934); *Gardiner v. Mayor & City Council*, 96 Md. 361, 381, 54 A. 85, 87 (1903).

The law is that when a condemnor voluntarily pays to the wrong person, he does so at his peril, but when the compensation is paid pursuant to an award of court, the condemnor is not liable to an adverse claimant even though the court award may be erroneous. *See City of St. Paul v. Certain Lands*, 48 F.2d 805 (8th Cir. 1931); *Cuyahoga County v. United States*, 294 F.2d 775 (Ct. Cl. 1961); *United States v. Certain Parcels of Land*, 40 F. Supp. 436 (D. Md. 1941); *In re Sea Beach Ry.*, 148 N.Y.S. 1080 (1907), *aff'd*, 196 N.Y. 533, 89 N.E. 1112 (1909); *Nolan v. City of New York*, 179 Misc. 1011, 39 N.Y.S.2d 360 (1942); 29A C.J.S. *Eminent Domain* § 205, at 919 (1965).

Payment by the condemnor to the court of a sum of money, equivalent to the value placed upon the land sought to be condemned, operates so as to protect the condemnor from claims by adverse claimants who assert title. *Record Bldg. & Loan Ass'n. v. Safe Deposit & Trust Co.*, 166 Md. at 353; 29A C.J.S. *Eminent Domain* § 205, at 919 (1965). Payment directly to the court-determined holder of legal title, *ipso facto*, makes the State a bona fide purchaser without notice of adverse claims.[7] *See Brydon v. Campbell*, 40 Md. 331 (1874). Even though the Buggs' 1972 corrected deed relates back to the time of the original tax deed's

[7] Condemnation proceedings are procedurally governed by Sub-title U of the Maryland Rules of Procedure. Provisions for notification are set forth in Rules U4 and U7. Payment is controlled by Rule U23.

execution, it cannot divest a bona fide purchaser from possession and title of the land.[8] *Hoffman v. Chapman*, 182 Md. 208, 211, 34 A.2d 438, 440 (1943); 76 C.J.S. *Reformation of Instruments* § 93a (1952).

We hold that the Commission had an absolute right to rely upon the public records which, after the Buggs-McKeever suit in 1962, clearly showed that the Buggs were not a party in title. Events occurring ten years later and demonstrating that the public records relied upon by the Commission were incorrect do not retroactively divest the State of the title that it obtained through full compliance with the condemnation law. *City of St. Paul v. Certain Lands, supra; Cuyahoga County v. United States, supra; United States v. Certain Parcels of Land, supra; In re Sea Beach Ry., supra; Nolan v. City of New York, supra;* 29A C.J.S. *Eminent Domanin* § 205, at 919 (1965).

We now turn to a discussion of the motion raising preliminary objection on the ground of sovereign immunity. Md. Rule 323b provided, at that time,[9] in pertinent part:

> "The defense of total or partial charitable or governmental immunity shall be raised by motion pursuant to this Rule. Such motion shall state specifically the grounds for immunity."[10]

The Maryland Transportation Authority was created by Laws 1970, Ch. 526. The legislative enactment is

[8] To us it seems that the battle the Buggs are waging is directed toward the wrong foe. Their claim, if not now barred by limitations, should be aimed at the persons who received the $3,125.

[9] Revisions, effective April 1, 1976, were made to Md. Rule 323. Rule 323a now enumerates "governmental immunity" as one of the grounds for a motion raising preliminary objection. Rule 323b now reads, in pertinent part:

> "Motions raising defenses of want of necessary parties, governmental immunity or lack of jurisdiction over the subject matter may be filed at any time."

[10] No contention is here made that the motion raising preliminary objection did not fully comply with the rule, nor would such an argument be valid in this case.

codified as Md. Ann. Code art. 41, § 208C, and it provides in subsection (b):

> "On and after July 1, 1971, all power, authority, obligations, functions, duties and discretion (i) heretofore granted to the State Roads Commission of Maryland relating to the financing, operation, maintenance and repair of . . . the John F. Kennedy Memorial Highway, and any other toll revenue project authorized and provided for under Article 89B of the Annotated Code of Maryland, . . . are hereby transferred, granted to and vested exclusively in the Maryland Transportation Authority, acting on behalf of the Department of Transportation."

It is beyond question that the Maryland Transportation Authority is an agency of the State and as such enjoys the same sovereign immunity as does the State for the reason that an agency of the State is but the alter ego of the State itself. *See* Md. Rule 323a 9. Appellants acknowledge that the Sovereign may not be sued without its consent[11] but suggest that the State, in this case, waived the sovereign immunity objection by failing to raise it when the State defended the Buggs' 1967 ejectment action involving the same land. Significantly, the appellant cites no authority for the novel assertion that a 1967 defense based, seemingly, upon *res judicata,* arising from the 1962 litigation, cited as *Bugg v. State Roads Comm'n, supra,* could *ad infinitum* bar any other defense in any other suit between the same parties, and we know of no such rule of law. In fact, the contrary rule seems to be the prevailing one. The Court of Appeals in *Dunne v. State,* 162 Md. 274, 288-89, 159 A. 751, 757 (1932), *cert. denied,* 287 U.S. 564 (1932), said flatly, "Courts should not hold that immunity from suit, one of the highest attributes of sovereignty, has been waived, except in cases of positive consent given, or by necessary and compelling implication." *See also Calvert Associates Ltd. Partner-*

[11] Laws of 1976, Ch. 450, provides that the defense of sovereign immunity to suits against the State, based on written contracts, will not apply unless otherwise provided by law. The act is effective July 1, 1976, and is only applicable to contracts entered into or executed on or after that date.

ship v. Dept. of Employment and Social Services, Md. , A.2d No. 162 Sept. Term 1975 (Ct. App., filed April 7, 1976).

There has been, in the case now before us, no "positive consent given" nor are we able to infer from the facts any "necessary and compelling implication" which conceivably call for a refusal to apply the doctrine in this case.

Albeit, that the MTA might have been able to interpose the theory of governmental immunity in the 1967 litigation but did not elect to do so, does not preclude it from raising that defense at the appropriate time in a proper case, such as that now before us. Cases holding that the State is immune from suit[12] are legion. *See, e.g., Calvert Associates Ltd. Partnership v. Dept. of Employment and Social Services, supra; Charles E. Brohawn & Bros. v. Board of Trustees,* 269 Md. 164, 304 A.2d 819 (1973); *Spriggs v. Levitt & Sons,* 267 Md. 679, 298 A.2d 442 (1973); *Jekofsky v. State Roads Comm'n,* 264 Md. 471, 287 A.2d 40 (1972); *Godwin v. County Comm'rs,* 256 Md. 326, 260 A.2d 295 (1970); *Univ. of Md. v. Maas,* 173 Md. 554, 197 A. 123 (1938); *Mayor & City Council v. State,* 173 Md. 267, 195 A. 571 (1937); *Dunne v. State, supra; State v. Wingert,* 132 Md. 605, 104 A. 117 (1918); *State v. Rich,* 126 Md. 643, 95 A. 956 (1915).

The MTA's motion raising preliminary objection was properly granted.

Order Affirmed.

Costs To Be Paid By Appellants.

[12] *But see* note 10 *supra.*

APPENDIX B

ORDER

Elvina Bugg, et al.,
v.
Maryland Transportation Authority, et al.,
In The
Court of Appeals of Maryland

Petition Docket No. 230

September Term, 1976

(No. 1058, September Term, 1975
Court of Special Appeals)

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the said petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

Judge Orth did not participate in the consideration of this petition.

/s/ ROBERT C. MURPHY,
Chief Judge.

Date: September 14, 1976.

APPENDIX C

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Elvina Bugg, et al.,
Appellants

v.

Maryland Transportation Authority, et al.,
Appellees.

In The
Court of Appeals of Maryland

Petition Docket No. 230

September Term, 1976

(No. 1058, September Term, 1975
Court of Special Appeals)

To The Honorable Clerk:

Please note an appeal of the above-entitled case to the Supreme Court of the United States of America from the Order of the Court of Appeals of Maryland entered therein on September 14, 1976.

CHARLES P. HOWARD, JR.,
222 St. Paul Place, Suite 3601,
Baltimore, Maryland 21202,
(301) 727-0340,
Attorney for Appellants.

I HEREBY CERTIFY, that a copy of the aforegoing Notice of Appeal was on this the 12th day of October, 1976, mailed to: Judson P. Garrett, Jr., Esquire, Special Assistant Attorney, P.O. Box 8755 Baltimore-Washington International Airport, Maryland 21240, Attorney for Appellees.

CHARLES P. HOWARD, JR.

Supreme Court, U. S.
FILED
JAN 19 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-805

ELVINA BUGG ET AL.,

Appellants,

v.

MARYLAND TRANSPORTATION AUTHORITY,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-805

ELVINA BUGG ET AL.,

Appellants,

v.

MARYLAND TRANSPORTATION AUTHORITY,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS

Pursuant to the provisions of Supreme Court Rule 16, the Maryland Transportation Authority (the Authority), the Appellee, moves the court to dismiss the appeal noted herein on the ground that the Court of Appeals of Maryland rendered no decision in the matter at bar.

In the alternative, treating the notice of appeal and the Jurisdictional Statement improvidently filed herein as an appeal from the decision of the Court of Special Appeals of Maryland, the Authority, pursuant to the provisions of Supreme Court Rule 16, moves the court to dismiss the appeal:

(1) On the ground that the Court does not have jurisdiction to review, by way of appeal, a decision of a state court in which the constitutional validity of a state statute was not drawn into question;

(2) on the ground that the appeal does not present a substantial federal question; and/or

(3) on the ground that the judgment below rests on an adequate non-federal basis.

Treating the notice of appeal and the Jurisdictional Statement improvidently filed herein as a petition or certiorari, the Authority, pursuant to the provisions of Supreme Court Rule 24, submits the following in opposition thereto.

OPINION BELOW

The Court of Appeals of Maryland did not issue an opinion in the matter at bar. The opinion of the Court of Special Appeals of Maryland has been reported at 31 Md. App. 622 and at 358 A.2d 562.

JURISDICTION

The Appellees (the Buggs) allegedly have sought review in the Court by way of "a direct Appeal" (J. 1) and to that end have filed a Jurisdictional Statement "pursuant to Supreme Court Rules 13(2) and 15." (*Id.*) However, they have asserted jurisdiction under 28 U.S.C. §1257(3), (J. 4) which, of course, provides for this Court to exercise jurisdiction by writ of certiorari, not by appeal. The Authority agrees that this Court may review the judgment below, if at all, by way of certiorari only.

STATEMENT

Some nine years ago the Court of Appeals of Maryland affirmed the dismissal of an ejectment action in which Mr. and Mrs. Pink Bugg of Cokesbury, Maryland, claimed title to some fourteen acres of land upon which the State had constructed a portion of Interstate Route 95 (known then as the Northwestern Expressway and now as the John F. Kennedy Memorial

Highway). *Bugg v. State Roads Commission,* 250 Md. 459, 243 A.2d 511 (1968). In so doing, the court traced the history of the Bugg claim and observed, "[t]his case marks the end of a long trail which Mr. and Mrs. Bugg have travelled for some eight years." 250 Md. at 460, 243 A.2d at 511 Alas, "[t]he seeming tolling of the knell for the 'Bugg-State Roads' controversy was, in the words of the late Samuel Langhorne Clemens (Mark Twain) 'greatly exaggerated.'"[1] *Bugg v. Maryland Transportation Authority,* 31 Md. App. 622, 623, 358 A.2d 562, 564 (1976). (1a.) Indeed, although Mr. Bugg, "an elderly litigious man"[2] who "achieved the status of [a] frequent visitor" to the Court of Appeals of Maryland,[3] died on September 5, 1973, his quixotic *cause celebre* continues to be litigated *ad nauseam.*[4]

[1] "Embodied in a cable from London, England, in 1897 to the Associated Press, the full text read: 'The reports of my death have been greatly exaggerated.'"

[2] Bugg v. Carpenter, 261 Md. 161, 273 A.2d 140 (1971).

[3] Bugg v. Trustees of Cokesbury Baptist Church, 252 Md. 59, 60, 248 A.2d 879 (1969).

[4] Bugg, et ux. v. William Cooper, et al., Circuit Court for Cecil County, Equity #9111; In re State Roads Commission, Right of Way Acquisition, Chas. McKeever, Dorothy Shivery, Pink Bugg et ux., In the Circuit Court for Cecil County, Contract No. N.E. 107, Item No. 330, Project Northeastern Expressway; Mackie, Treasurer of Cecil County v. Bugg, In the Circuit Court for Cecil County, Equity #9405; Bugg, et ux. v. Bramble, et al., Circuit Court for Cecil County, Equity #2254-B; McKeever, et al. v. Bugg, et ux., Circuit Court for Cecil County, Law #4991 (removed to the Circuit Court for Kent County and tried there as Law #1831); Bugg, et ux. v. Maryland State Roads Commission, Circuit Court for Cecil County, Law #7869, aff'd, 205 Md. 459, *supra;* Bugg, et ux. v. Maryland State Roads Commission, Circuit Court for Cecil County, Law #9239; Bugg, et ux. v. Maryland State Highway Commission, et al. (amended to Maryland Transportation Authority, et al.), Circuit Court for Cecil County, Law #10607. Bugg v. Maryland Transportation Authority et al., Circuit Court for Cecil County, Equity #3927-B (the matter at bar).

Consequently, "what follows is yet another canto in the saga of Pink Bugg, Cokesbury's dauntless appellant."[5]

Since an understanding of the ever-lengthening background of this unnecessarily complicated and fluid claim is essential to a proper understanding of the context in which the issues at bar are presented, it is necessary to review the meandering history of this increasingly frivolous controversy.

On August 11, 1958, Pink Bugg and Elvina Bugg, his wife, purchased, for $140 at a tax sale, a parcel of unimproved land described in the advertisement of sale as containing approximately *2* acres and assessed to the William Cooper estate (R. 73). Thereafter, Mr. Bugg took a surveyor to the property which he thought he had bought and indicated what he believed to be the boundaries. A description was thus prepared *at Mr. Bugg's direction. Bugg v. State Roads Commission, supra,* 250 Md. at 460, 243 A.2d at 511, 512.

On January 6, 1960, the Buggs filed a bill of complaint in the Circuit Court for Cecil County, Equity No. 9111, to foreclose the right of redemption of William Cooper deceased, and the William Cooper estate, and all persons claiming to have an interest in a parcel of unimproved land containing *14.160* acres more or less. An order of publication was duly published in a newspaper in Cecil County (R. 73).

On June 15, 1960, there having been no answer filed to the bill of complaint, the Court published a decree foreclosing the right of redemption and vesting the fee simple title thereto in Pink Bugg and Elvina Bugg, his wife, and further ordering that the County Treasurer prepare and execute a deed therefor to the purchasers. (*Id.*)

[5] Bugg v. Cecil County Commissioners, 261 Md. 507, 508, 276 A.2d 31 (1971).

On June 17, 1960, the County Treasurer executed a deed, provided by Mr. Bugg's attorney and containing the description prepared by Mr. Bugg's surveyor, purporting to convey the William Cooper estate to Pink Bugg and Elvina Bugg, his wife, as tenants by the entireties. (*Id.*)

In 1961, the State Roads Commission instituted proceedings for the acquisition of 12.5 acres of a tract of land in connection with the construction of the then Northeastern Expressway (now John F. Kennedy Memorial Highway) and deposited the sum of $3,125, which it believed to be the fair market value of the property. Apparently as a result of the Commission's title examination, Mr. and Mrs. Bugg, Mr. Charles McKeever, Mrs. Marie McKeiver, Mrs. Dorothy M. Shivery and Mr. R. E. Shivery were named as defendants. *Bugg v. State Roads Commission, supra,* 250 Md. at 460, 243 A.2d at 512.

Subsequent to the filing of the Commission's suit, Mr. McKeever and Mrs. Shivery, as heirs of one Phillip Smeltzer, brought an action in ejectment against Mr. and Mrs. Bugg. Instituted in the Circuit Court for Cecil County, this action was removed to Kent County, Maryland, and tried before the Circuit Court for Kent County. That court found: that the property which was the subject of the tax deed was not the property of the William Cooper estate, but rather the property of the Phillip Smeltzer estate; that there were no taxes due on the Smeltzer estate; and consequently, (a tax sale of property on which taxes have been paid being invalid) that the Buggs had no interest in the property described in the tax deed. No appeal was taken from that judgment. *Id.*

"As a consequence of the McKeever and Shivery victory in the ejectment suit, the Commission amended its petition in the condemnation suit, eliminating all

defendants other than Mr. McKeever and Mrs. Shivery, with the result that they received the $3,125 deposited with the court clerk in connection with the taking." *Ibid,* 250 Md. at 461, 243 A.2d at 512.

"On May 26, 1967, the Buggs filed suit for ejectment against the Maryland State Roads Commission, . . . from the land which they claimed under their deed. Upon motion by the Commission the Court dismissed the case, holding that the ejectment suit in Kent County established that they had no title to the land described in their deed." (R. 74). On appeal, the Court of Appeals of Maryland affirmed. *Bugg v. State Road Commission, supra,* 250 Md. at 461, 243 A.2d at 512.

Apparently around 1972 the Buggs secured another survey, obtained another description, and petitioned the Circuit Court for Cecil County to correct their deed accordingly. In answer to an order to show cause, if any there be, why the deed should not be reformed as prayed, the County Treasurer filed an answer contending that the Authority holds title to the land and therefore should be made a party to the proceeding (R. 74). The Court disagreed. Viewing the action before it as merely an action to reform a deed to reflect the intention of the parties thereto and realizing that the Treasurer necessarily warrants nothing in a tax sale, the Court concluded that the matter before it was "not a proceeding to try the title to the property involved." (R. 75). Thereupon, the court refused to permit the Authority to enter the case and ordered the Treasurer to sign a corrected deed (R. 75-77).

On August 2, 1974, appellant Gary Bugg, as "administrator of the estate of Pink Bugg, deceased,"[6] filed what the Chancellor later termed "a paper writing

[6] According to the bill, Mr. Bugg died "survived by a wife, Nora Bell Bugg, a resident now of the State of New York, two sons, Gary Bugg and William Bugg and a sister, Lucille Smalls, also residents of the State of New York . . ." (R. 1).

entitled 'Bill In Equity For Damages'" (R. 50). Appended with two exhibits[7] and accompanied by a *Prayer for Jury Trial,* the bill was filed in the Circuit Court for Cecil County and docketed as Equity #3927-B. Named as defendants were the Authority and the mythical John F. Kennedy Memorial Highway Commission. In pertinent part, the bill alleged that the decedent had acquired a certain 13 acre tract of land in Cecil County on August 11, 1958; that he was in peaceful possession thereof until on or about July 2, 1962, when the Authority's predecessor-in-interest, the State Roads Commission, wrongfully ejected him therefrom and appropriated the same for use in connection with the John F. Kennedy Memorial Highway; that Mr. Pink Bugg "was not made a party to any suit or proceeding of taking"; that such action took place without due process of law and without payment of compensation to Mr. Bugg;[8] that Mr. Bugg's original deed was corrected on August 25, 1972; and that the defendants refused to return the property to Mr. Bugg. Thereupon, the bill claimed money damages in the amount of 10 million dollars[9] (R. 1-9).

Responding to the bill, the Authority filed a demurrer and raised the preliminary objection of sovereign immunity (R. 11-22). Although plaintiff Gary Bugg previously had denied that Mrs. Elvina Bugg had either married or survived his father (R. 35), Mrs. Elvina Bugg soon entered the case as a party plaintiff (R. 43-44). On

[7] The 1972 corrected deed (R. 5-8) and a survey plat (R. 9).

[8] Appellants claim that the State Roads Commission condemned the property in question and paid compensation therefor to the wrong individuals was first asserted in the Court of Special Appeals, not in the trial court.

[9] The enormous amount of the claim does not stem from the alleged fair market value of the 13 acre tract at the time it was taken; rather, is founded upon the even less reasonable (indeed, pyritic) illusion that the tolls which the State has collected on this site are recoverable as rents and profits of the land.

November 14, 1974, the Chancellor issued an Opinion and Order sustaining the demurrer with leave to amend (R. 50-51).

On December 13, 1974, an Amended Bill of Complaint was filed on behalf of Mrs. Elvina Bugg and Mr. Gary Bugg (R. 55-62). Again named as a defendant, the Authority was expressly acknowledged to be "an agency of the State of Maryland" and candidly "sued in its capacity as such." (R. 55). Named in place of the mythical John F. Kennedy Memorial Highway Commission was the equally ficticious John F. Kennedy Memorial Highway Administration.[10]

Generously nourished by some different allegations of fact[11] and by conclusions of law, this version of the Bugg claim explicitly recognized that it was founded upon a cause of action[12] which would be barred by the doctrine of sovereign immunity were it brought at law (R. 58). Thus, apparently on the theory that sovereign immunity is not recognized by Maryland's equity courts, the Amended Bill sought injunctive as well as monetary relief. Specifically, the Amended Bill would have had the Chancellor: (1) enjoin the Authority from denying the Buggs access to and entry upon the property; (2) require the Authority to remove any and all structures which it had erected on the property; (3) forbid the Authority, its licensees *et al.* from using the highway without due compensation to the Buggs; (4) compel the

[10] Owing to its nonexistence, the Administration was not served, did not appear and consequently is not a party litigant (A. 5a, n.6).

[11] E.g., although founded upon exactly the same survey plat, corrected deed and order of court, this version claimed title to a 15.406 acre trace (R. 55). Moreover, noticeably unlike the original bill, the Amended Bill did not assert that Mr. Pink Bugg died "survived by a wife, Nora Bell Bugg, now of New York." Rather, according to the Amended Bill, Mr. Bugg died "survived by Elvina Bugg" *et al.* (R. 57).

[12] Characterized on appeal as "one of ejectment".

Authority to divert traffic around the property; (5) require the Authority to regarde the property wherever it had erected roadways or structures; (6) order the Authority to account for all rents and profits derived from the use of the land; and (7) mandate the Authority to make restitution in the amount of 10 million dollars (R. 60-62).

Appended to the Amended Bill were four exhibits: a 1972 corrected deed from the Treasurer of Cecil County to "Pink Bugg and Elvina Bugg, his wife . . . as tenants by the Entireties" (R. 63); a 1972 "line of possession survey" plat of a 15.406 acre tract of land alleged to be "formerly the Wm. Cooper Estate" (R. 68-70);[13] a June 15, 1972 Memorandum Opinion of the Circuit Court for Cecil County[14] (R. 73-77); and the 1960 deed from the Treasurer to "Pink Bugg and Elvina Bugg, his wife . . . as tenants by the entireties" (R. 71-72).

On February 18, 1975, having unsuccessfully moved the trial court not to receive or, in the alternative, to strike the Amended Bill (R. 78), the Authority filed a motion raising the preliminary object of sovereign immunity (R. 83-84).[15]

On September 23, 1975, the matter having been fully briefed and argument thereon having been heard, the

[13] Inter alia, the western boundary of the tract carries the fatal notation, "line of division as pointed out by Mr. Bugg."

[14] As previously indicated, even a cursory reading of this opinion reveals that the Chancellor was not deciding "title to the property involved." Rather, he was merely reforming the instrument to reflect the intention of the parties to the original tax sale deed.

[15] The motion was founded upon the assertion that, even if the Buggs were the rightful owners of the land in question, a taking thereof without payment of compensation was not, as a matter of law, an act of the State, but rather an ultra vires act of a state official or employee for which the individual official or employee and not the State is answerable.

Chancellor issued an order and opinion in which, pursuant to the decision in *Dunne v. State,* 162 Md. 274, 159 A. 751 (1932), *app. dism'd and cert. den.* 287 U.S. 564; the Authority, as an agency of the State of Maryland, was held to be immune from suit, even from an action based on the allegedly unlawful taking of private property (R. 112-115).

On October 3, 1975, the Buggs noted an appeal to the Court of Special Appeals of Maryland (R. 116). On June 7, 1975, that Court affirmed the judgment of the Circuit Court for Cecil County. *Bugg v. Maryland Transportation Authority, supra* (A. 1a). In so doing, the Court of Special Appeals not only agreed that the doctrine of sovereign immunity barred the instant action, (A. 10a-12a), but, in response to the Bugg's newest claim (i.e., that there had been a condemnation proceeding in which the Authority's predecessor had paid the wrong claimant) and in an apparent attempt at thwarting further "cantos" in this "continuing saga," the Court also held that payment by the State, as a condemnor of land, to a court-determined holder of legal title *ipso facto* made the State a *bona fide* purchaser of the property without notice of adverse claims, and consequently not thereafter answerable to the holder of a subsequently corrected deed (A. 10a).

On or about August 11, 1976, the Buggs filed a petition in the Court of Appeals of Maryland for a writ of certiorari to the Court of Special Appeals of Maryland. On September 14, 1976, the Court of Appeals entered an order denying the petition on the ground that there had been no showing that review by certiorari was desirable or in the public interest (A. 13a).

On or about October 7, 1976, a notice of the instant "appeal" was filed in the Court of Appeals of Maryland (A. 14a). The "appeal" was docketed in this court on December 13, 1976.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Buggs have correctly stated the Fourteenth Amendment.[16]

28 U.S.C. §1257, 62 Stat. 929, provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of

[16] However, there is no equal protection claim at bar. Thus, while the second question presented in the Jurisdictional Statement asserts a denial of equal protection, that claim is wholly unsupported. There simply are no facts alleged which arguably suggest discrimination in contravention of the Equal Protection Clause. If the Buggs have a constitutional complaint, it is that they were denied due process, not equal protection. Similarly, although the first question presented in the Jurisdictional Statement asserts a denial of due process in violation of the Fifth Amendment, the Fifth Amendment does not, by its own force, apply to or restrict the State's eminent domain authority. Winous Point Shooting Club v. Caspersen, 193 U.S. 189 (1904). Rather, the Fifth Amendment has been applied to the states only through the Fourteenth Amendment. Accordingly, the questions presented herein must be examined under the Fourteenth Amendment, Finally, although the Jurisdictional Statement cites Article 23 of the Maryland Declaration of Rights and Article 23 of the Maryland Constitution, those provisions are not challenged as contravening the U.S. Constitution. Absent such a challenge, their construction is not within the constitutional compentence of this court.

the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

There are no regulations involved in this matter.

QUESTIONS PRESENTED

1. Is the Due Process Clause of the Fourteenth Amendment offended by a state court decision which applies the doctrine of sovereign immunity so as to require that an action on behalf of the alleged owner of property claimed to have been unlawfully taken by the State be brought against the state official or employee responsible for the alleged taking and not against the State or an agency or instrumentality thereof?

2. Is the Due Process Clause of the Fourteenth Amendment offended by a state court decision which holds that payment by the State, as a condemnor of land, to a court-determined holder of legal title *ipso facto* makes the State a *bona fide* purchaser without notice of adverse claims and thereafter not answerable to the holder of a subsequently corrected deed?

ARGUMENT

NO APPEAL LIES HEREIN FROM THE COURT OF APPEALS OF MARYLAND.

Where, as here, a state's intermediate appellate court affirms the judgment of a *nisi prius* court and the state's highest court thereafter refuses an application for a writ of certiorari, an appeal to this court, if otherwise proper, is from the decision of the intermediate appellate court, and an appeal from the state's highest court will be dismissed. *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 160 (1954). Accordingly, the appeal from the Court of Appeals of Maryland must be dismissed.

NO APPEAL LIES FROM THE DECISION OF THE COURT OF SPECIAL APPEALS OF MARYLAND.

This court has jurisdiction to review a decision of a state appellate court by appeal only where there is drawn into question the validity of a state *statute* on the ground of its being repugnant to the Constitution, treaties or laws of the United States and the decision below was in favor of its validity. 62 Stat. 929, 28 U.S.C. §1257(2); *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 717 (1961). There is no state statute at issue in the matter at bar. Accordingly, the appeal from the decision of the Court of Special Appeals of Maryland must be denied and, if this court is to review the judgment below, it must do so by certiorari.

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

It is axiomatic that a real and substantial federal question is essential to the jurisdiction of this Court. Whether the asserted jurisdiction be by way of appeal or by writ of certiorari, this court may not assume jurisdiction to review a state court judgment where the federal claim is so wanting in foundation and so unsubstantial as to be devoid of all merit and frivolous. *California Water Service Co. v. Redding*, 304 U.S. 252 (1938). See, Supreme Court Rules, Rule 16(b) and 19(1)(a).

In *Bugg v. Cecil County Commissioners, supra,* 261 Md. at 515, 276 A.2d at 35 (1971), the Court of Appeals of Maryland observed, "close scrutiny reveals with embarassing clarity the fact that Bugg's answer to the motion for summary judgment is little more than so much twaddle." In the light of: (a) the record herein; (b) the patent failure of the Buggs to cite even one decision of *any* court in favor of their embarrassingly bare claim; and (c) the prior decisions of this court which

support the judgment below,[17] the claim at bar is but a blatant continuation of that regrettable tradition.

Accordingly, pursuant to the provisions of Supreme Court Rule 16(b), this appeal must be dismissed for want of a substantial federal question. Moreover, treating as a petition for certiorari the papers whereby the appeal herein was improvidently noted, the writ should be denied pursuant to Supreme Court Rule 19(1)(a), for failure to present "a federal question of substance either not theretofore determined by the court or decided in a way probably not in accord with applicable decisions of this court."

THE JUDGMENT BELOW RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

Assuming, *arguendo,* that Mr. and Mrs. Bugg somehow eventually acquired title to the disputed property via the exceedingly belatedly corrected deed, it is well settled, as a matter of State law *and federal common law,* that, having paid compensation to an

[17] As to sovereign immunity, see, Hans v. Louisiana, 134 U.S. 1, 15 (1890), in which this court acknowledged that the suability of a State without its consent is a thing unknown to the law and unchanged by the Constitution; and Poindexter v. Greenshow, 114 U.S. 270, (1885), in which this court observed that the State "itself is an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, a perfect representative; but outside of that, it is a lawless usurpation. * * * It is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government, and not to the State, for, as it can speak and act only by the law, whatever it does say and do must be lawful. That which, therefore, is unlawful because so made by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those individual persons who falsely speak and act in its name." See also, Hopkins v. Clemson Agricultural College, 221 U.S. 636 (1911). As to the constitutional validity of the bona fide purchaser-condemnor doctrine, see United States v. Dunnington, 146 U.S. 338, 351-354 (1892).

award of court, a condemnor is not liable to an adverse claimant, even when the court award was erroneous and the adverse claimant was the real owner of the land. See, *City of St. Paul v. Certain Lands,* 48 F.2d 805 (8th Cir. 1931); *Cuyahoga County v. United States,* 294 F.2d 775 (Ct. Cl. 1961); *United States v. Certain Parcels of Land,* 40 F. Supp. 436 (D. Md. 1941); *In re Sea Beach Ry.,* 148 N.Y.S. 1080 (1907), *aff'd,* 196 N.Y. 533, 89 N.E. 1112 (1909); *Nolan v. City of New York,* 179 Misc. 1011, 39 N.Y.S.2d 360 (1942); *Eyre v. Fairbault,* 141 N.W. 170 (Minn. 1913); 29A C.J.S. *Eminent Domain* §205, at 919 (1965).

Accordingly, the appeal noted herein should be dismissed on the further ground that the judgment below rests on an adequate non-federal basis. Moreover, treating, as a petition for certiorari the papers whereby the appeal herein was improvidently noted, the writ should be denied on the ground that the judgment below rests on an adequate non-federal basis.

THE BUGGS HAVE FATALLY FAILED TO PRESENT THEIR CLAIM WITH SUFFICIENT ACCURACY, BREVITY AND CLARITY.

Finally, "[t]he failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration" is a sufficient reason for denying a petition for certiorari. Supreme Court Rule 23(4). If Rule 23(4) is to have any vitality, it must be applied in the matter at bar. Accordingly, treating as a petition for certiorari the papers whereby the appeal herein was improvidently noted, the writ must be denied for failure to state the claim with that accuracy, brevity and clarity which is a prerequisite to discretionary review by this court.

CONCLUSION

For the reasons assigned, the appeal noted herein must be dismissed, and, treating as a petition for certiorari the papers whereby the appeal herein was improvidently noted, certiorari must be denied.

Respectfully submitted,

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